

REMARKS

Claims 1-4 are pending in this application and have been examined. Claims 1-4 stand rejected. Claims 1-4 have been amended. Applicants respectfully request reconsideration and allowance of Claims 1-4.

Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

Claims 1-4 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner has considered applicants' position set forth in the prior Response dated February 3, 2003 (the "Prior Response") but has maintained this rejection on the basis that the claims are unclear and indefinite because they do not recite a structural limitation for ATH1 gene products.

Claims 1-4 have been amended to recite that the ATH1 gene product and the ATH1 protein are encoded by the nucleotide sequence of Figure 1, and that the ATH1 gene comprises the nucleotide sequence of Figure 1. These amendments are supported by the Specification at page 15, line 20 (stating that Figure 1 shows the DNA sequence of the ATH1 cDNA). In view of these amendments, and for the reasons set forth in the Prior Response, applicants respectfully request withdrawal of this ground of rejection.

Rejection of Claims Under 35 U.S.C. § 102(e)

Claims 1-4 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,744,693 (Meyerowitz et al.). Again, the Examiner has considered applicants' position set forth in the Prior Response but has maintained the rejection on the basis that it is not clear that the gene products used in Meyerowitz et al. are different from ATH1 gene products because the pending claims do not recite a structural limitation for ATH1 gene products.

As set forth above, Claims 1-4 have been amended to recite that the ATH1 gene product and the ATH1 protein are encoded by the nucleotide sequence of Figure 1, and that the ATH1

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS™  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

gene comprises the nucleotide sequence of Figure 1. For the reasons described in the Prior Response, Meyerowitz et al. do not disclose every limitation of the invention in Claim 1 and, therefore, cannot anticipate or render obvious the present invention. Accordingly, applicants respectfully request withdrawal of this ground of rejection.

Conclusion

In view of the foregoing amendments and remarks, Claims 1-4 are believed to be in condition for allowance. Reconsideration and favorable action is requested.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Karen Blöchliger, Ph.D.  
Registration No. 41,395  
Direct Dial No. 206.695.1783

I hereby certify that this correspondence is being transmitted via facsimile to the U.S. Patent and Trademark Office, Group Art Unit 1637, Examiner Suryaprabha Chunduru, at facsimile number 703.872.9307, on October 14, 2003.

Date: 10/14/2003



KBB:KBB

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2500  
Seattle, Washington 98101  
206.682.8100